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[The President]

subject to the same nominations at 2-30 p.m. to-morrow and I nominate the same hon. Member from the panel of chairmen to be a member of this committee."

The House signified its assent.

\* The hon. the PRESIDENT:—"Rao Bahadur C. Natesa Mudaliyar moves for leave to amend the Standing Order No. 54 as follows:—

'After the words "*a matter of general public interest*" add the following:

"which shall include, besides other matters, individual hardships, personal wrongs and grievances of public servants involving injustice, ill-treatment, injury to self-respect, abuse of power, infringement of Board's Standing Orders, Rules and Regulations of Government".'

"I have to ask if the hon. Member has the leave of the Council."

\* The hon. Mr. C. P. RAMASWAMI AYYAR:—"I object."

\* The hon. the PRESIDENT:—"Objection is taken and I have therefore to request hon. Members who support the motion to rise in their places."

More than twenty hon. Members having risen in their places, the hon. the PRESIDENT said:—"I take it that the hon. Member has the leave of the House and if the House does not object I refer this to the same committee as has been appointed to the first Standing Order. The same hon. Member from the panel of chairmen shall be the chairman of the committee."

The House signified its assent in this case also.

#### XIV

#### THE MADRAS CIVIL COURTS BILL.

\* The hon. Mr. C. P. RAMASWAMI AYYAR:—"Mr. President, Sir, I have the honour to present the (a) report of the Select Committee on the Civil Courts Bill and I have further the honour to move that the Bill as amended by the Select Committee be taken into consideration. In making this motion let me, Mr. President, with your leave be allowed to offer a few, just a few, remarks. I think the report of the Select Committee has shown that as to the main provision of the Bill there are practically no two opinions. Let me recapitulate what the provisions of the Bill are. The provisions of the Bill include and comprise the power on behalf of the Government in respect of appointing additional Judges and thus avoiding fresh or extra establishments in respect of those courts, in short, to provide additional Judges who may be sent to particular places so as to enable the Government and the country to save the cost of those establishments, buildings and the incidental expenses. Just in order to indicate the kind of expenses which will normally arise and which will be avoided by the procedure contemplated by the main provisions of the Bill, let me point out exactly what the difference would be. When a new court is constituted, there is the establishment of clerks and peons. That officer sits as an independent court and exercises jurisdiction over such suits and proceedings as are from time to time sent from the permanent courts. In the new courts suits are given new numbers and given new postings. The court has thereupon to maintain scores of registers, a suit register, a disposal register, the A diary and so on. The court requires a more or less elaborate clerical establishment which in turn requires to be accommodated in a separate building. Being given new numbers in the additional courts

(a) Printed as Appendix IV on pages 163-180 infra.



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the suits and proceedings transferred to it obtain further leases of life, drag on their weary length in the same manner as in the old courts. These are some of the inconveniences which are sought to be avoided by the new Bill. I may say in passing that this Bill was referred for opinion to the High Court and various other offices for opinion. I may say they have been practically if not wholly unanimous as to the necessity from the point of view of expedition and economy of the measures contemplated by the Government. I may say also that there are certain other changes as to the jurisdiction over ministerial officers and the control over these offices as to which also there is hardly a difference of opinion. So far as the actual provisions of the Bill which I am bringing forward and asking this Council to take into consideration are concerned there are no two opinions. I do not think I am putting the case too high when I say that on the twenty and odd sections which comprise the Bill there are a few amendments about 70 or 80 many of them formal in character and I think on these sections there are no matters of fundamental divergence. I know however the strong opinion that has been expressed as to another matter. In a very well-reasoned note Mr. Yahya Ali who is now not a member of this House has pointed out the utility of the divorce of administrative functions from the High Court and the same note has been struck by the hon. Member from Madras and one or two other hon. Members.

“ Now, that is a matter on which we are confronted with this difficulty. Sitting as the Chairman or President of that Select Committee, I ruled that on the wording of section 106 of the Government of India Act it was not open for this Council to consider that matter. Let me with your leave, Mr. President, traverse that ground over again, because I understand that that question will arise, though in a somewhat indirect form, on this debate. Section 106 of the Government of India Act says, ‘subject to the provisions of any such letters patent, all such jurisdictions, powers and authority as are vested in those courts respectively at the commencement of this Act’; that is, one result of that provision is that all powers, all jurisdictions and all authority that were vested in the High Court in 1919, when this Act came into force, are preserved. Now, the Government of India have, not without a change of opinion in this matter—and I know it is a matter on which you, Mr. President, have to give your ruling when the question arises—arrived at this conclusion, namely, that it is *ultra vires* of this legislature to take away the powers of appointment vested in the High Court. I must say there is no provision to which I might advert in order to make my meaning clear. There are certain matters as to which this legislature cannot operate. These matters are set out in the Fifth Schedule to the Government of India Act, and with regard to section 106 of the Act the provisions which may be repealed by the Indian Legislature are ‘jurisdiction, powers and authority of high courts’. That is any question involving any alteration in the jurisdiction, powers and authority of the High Court under section 106 can be done only by the Indian Legislature and not by the Provincial Legislative Council. I took that view and ruled out certain amendments as out of order in the Select Committee, and the report of the Select Committee which I have placed before this House bears evidence of the operation of this view. Hon’ble Members who have in their hands the



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report of the Select Committee will see from page 2 that 'The hon. the Law Member intimated to us the decision of the Government of India that the provision in the original draft Bill, under which it was proposed that appeals from subordinate courts in suits of which the amount of subject-matter does not exceed Rs. 5,000 should lie to the High Court instead of to the District Judges as at present, would be *ultra vires* of the local legislature in view of section 106 of the Government of India Act.' Now, that is a matter upon which the Government of India thinks, and it has communicated its own decision to us, that these amendments would be *ultra vires* because we sent up these amendments to the Government of India for their opinion. Now, Sir, what I desire to say is this: the question whether in addition to the provisions which are incorporated in this Bill this other provision may also be added, or what modification might be brought in, is, I submit, a different question to be approached in a different manner. I have no objection to that question being raised and debated upon in this House, if you, Mr. President, rule it *intra vires*, if you like to differ from the Government of India on the matter. Because, after all, the Government of India can only bind us administratively. We are now dealing with this matter as a legislating body, and when an amendment is brought forward, you, Mr. President, will have to decide upon it and have to go through the same process which the Government of India have gone through, and it is possible that you, Mr. President, may concur with the Government of India. It is also open to you to differ from the Government of India thus leading to other results which are possible later on. What I mean to say is that this is a question which I venture to ask my hon. Colleagues to keep out of their minds so far as the real discussion of this measure is concerned.

"There is another matter. It is open to hon. Members of this House if they feel strongly separately to debate that question, and I know that a certain number of Members of this House feel very strongly, that the power of appointment of district munsifs should be exercised by the Local Government and not by the High Court. On the other hand, I find that certain other members feel that no power of appointment in judicial matters should be exercised by the Local Government but only by the High Court. The hon. Member for the University, who is not here now, has suggested in his dissenting note to the Select Committee report that the High Court should have the power of appointment to all judicial offices in the Presidency, in other words that sub-judges and district judges are also to be appointed by the High Court. These are different aspects of the matter which may be debated upon, I submit, irrespectively of the provisions of this Bill which I am bringing forward. There is one objection which may be taken in this connexion. It may be said with a certain amount of emphasis and cogency 'you want a consolidating Bill and if we do not take this opportunity to debate this matter it will be said afterwards 'why did you fold your hands then and keep still when a consolidating Bill was on the legislative anvil.' It seems to me that the solution of this problem is not very difficult. For either this Council can deal with that matter or it cannot. If it can deal with that matter—and you, Mr. President, have to rule on that point—by all means let this Council deal with it. If it is ruled on the other hand that this subject cannot be debated here but that the forum for the determination or adjudication of this matter is the Indian Legislature, no action of this



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Council either by adjourning this Bill or otherwise will solve that question and the Legislative Assembly may debate this matter and come to a conclusion. On the other hand, it may be asked why should this House make itself a party to any consolidating measure of this sort until that other question is disposed of? And the answer that I endeavour to give to it is this: if it is conceded that this Bill is a measure of economy and of expediency by which we can get rid of all temporary courts, by which we can abolish all temporary courts by sending a shorthand-writer and a few clerks to accompany an additional judge wherever you have got heavy arrears, if by that means you can practise economy, that economy being increased as time goes on, why not deal with that aspect of the matter? Why not make it perfectly clear that anything done in this House does not prejudge the subject-matter of any question that can only be debated upon in some other House? I submit that that would be the proper way for us to deal with this measure. I am tempted to make these observations in view to the motion which I see tabled here for the adjournment of the consideration of this Bill. An adjournment of the consideration of this Bill whether it be for a short time or for an indefinite period would practically mean that a much-needed measure of economy and efficiency has to be postponed pending a question which may or may not be debated upon in this House. If it can be debated upon in this House and the hon. the President so rules it, by all means do so and come to a decision. If it cannot be debated on in this House, an adjournment of this Bill will not take us any further because somebody in the Legislative Assembly must take upon himself the responsibility of moving that matter. I may say that if a resolution is moved or is sought to be moved in this House regarding this question and the House expresses its views on the matter, it shall be my duty and I shall certainly forward that resolution to the Government of India, and if the Government of India will thereupon move in the matter I shall not stand in the way of any such resolution being put forward. The point I desire to emphasize and re-emphasize is this: that if it is not possible for this House to jump out of its skin on this matter because a discussion of this matter is *ultra vires* of this House, an adjournment of this Bill merely for the purpose of a hypothetical consideration in the Legislative Assembly will not be very desirable. There is another aspect of this question from which I would invite hon. Members to consider this question. If we cannot discuss this question, the powers of the High Court remain as they are and they are not to be interfered with under the present scheme of the Civil Courts Bill of 1873. Unless the Government of India move in this matter or I am asked to move in this matter at the instance of this House by a resolution carried on this matter, nothing can be done, and the High Court will go on exercising its functions, and the adjournment of this Bill will not serve to carry out the purpose which hon. Members have in their minds, because I take it that hon. Members who want to have an adjournment of this measure have some definite and particular object to serve. That object must be that the power of appointment vested in the High Court should be modified. That cannot be modified in any manner except by a Bill *ad hoc* in the Legislative Assembly. Unless that is done, this purpose cannot go forward. I submit therefore that we need not adjourn consideration and passing of this extra measure of economy and efficiency, in order to carry out that purpose, nor will that purpose be effectively carried out by a postponement.



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"I may further say that if the House does not want to have this as a consolidating measure, by all means let us have an amending Bill and put this reform through. On the question of the reform that we want additional judges, there are no two opinions. I think I am right in saying that the object of this whole House is to effect that economy. Then, if you like, do not call it a consolidating measure and do not make it impossible for you to move in this matter later on. But let us not curtail the possibility of this useful step by insisting on a mere adjournment which will not produce results which the hon. the Movers of the adjournment have in their minds. I therefore move that this Bill be taken into consideration."

\* The hon. Mr. R. A. GRAHAM :—"I second it."

MR. A. RAMASWAMI MUDALIYAR :—"Mr. President, I just wish to raise a point of order at this stage. I gave notice of certain amendments, to which the hon. the Law Member had adverted. The effect of the amendments was that the administrative power now vested in the High Court should be divested from that body and should be transferred to the Local Government. I find that none of these amendments have been tabled in the agenda that I have got in my hands, and I do not know why it has been done so. I have not received any communication from your office pointing out that these amendments are either irrelevant or out of order. Under the Standing Orders an amendment is ruled out by you only on the grounds that it is irrelevant or that it is outside the scope of this Bill. My amendments contemplate what is sought in section 106 of the Government of India Act. I venture to submit that those amendments are neither irrelevant nor beyond the scope of the Bill itself, because the hon. the Law Member himself conceded that this is a consolidating Bill. They are even otherwise *intra vires* and will not be out of order. I should like to know, Sir, where I stand with reference to these amendments and whether you have already ruled them out without giving me an opportunity to explain my position."

\* The hon. the PRESIDENT :—"I understand that the hon. Member has received a communication from the Legislative Department setting out its views as to the admissibility of those amendments. If not, I may assure the hon. Member that I am quite prepared to look into the matter."

MR. A. RAMASWAMI MUDALIYAR :—"I first received a communication from the Law Department that the previous sanction of the Government of India was necessary for these amendments. But there was no suggestion, so far as your office was concerned, that these amendments were *ultra vires*. Then, certain correspondence passed between me and the Secretary to Government, Law Department, with reference to these amendments, and I received a communication later that they were not *ultra vires*. But the last communication I had from the Law Department brought me to the original state of affairs that the amendments were *ultra vires*. What I do suggest is this: that my amendments should go forward on the agenda, and an opportunity should be given on the floor of this House to us before you decide that the amendments are either *ultra vires* or *intra vires*. That opportunity has not been given in regard to my amendments. They have not even been embodied in the agenda itself. As a question of principle, it is a very important matter."



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\* The hon. Mr. C. P. RAMASWAMI AYYAR :—" May I suggest to my hon. Friend this ? I know there is a great deal of substance in the complaint of my hon. Friend from Chingleput. I think the question of *ultra vires* or *intra vires* of this matter, though it may departmentally be dealt with either by the Government of India or by the Legislative Department of this Government, has finally, so far as this piece of legislation is concerned, to be decided by you, Sir. You may take note of the other matter, take note of the circumstance that the Government of India has held that it is not *intra vires* of this legislature to deal with this matter. But it seems to me—I speak with all humility—that as this raises a question of order, if the hon. Member from Chingleput has no objection, and if you, Sir, will allow it, the procedure may be to allow these amendments to be moved at the proper moment when the Bill is being dealt with. It is a mere suggestion I am throwing out, and I am entirely in your hands, Sir."

\* The hon. the PRESIDENT :—" I was under the impression, as I have said before, that the hon. Member was satisfied with the communication he received from the Legislative Department. That was why I ordered  
4 p.m. the omission of the amendment from the notice paper. I thought he had practically withdrawn his amendment. But if he wants the question of admissibility to be decided by me, I have no objection to restore these amendments to their proper places in the agenda under the proper section and to deal with the matter when it arises."

Mr. A. RAMASWAMI MUDALIYAR :—" I have only to say that if you will look into the copies of all letters that passed between the Legislative Secretary and myself in this connexion, they will clearly show my position. There is really no statutory relationship between myself and His Excellency the Viceroy or the Government of India and it is really an anomalous position that a private Member moving an amendment already enacted by the Local Government should go to the Government of India.

" Why I raise this point is this, Sir. As you are aware the hon. the Law Member referred to a motion for adjournment given by one hon. Member. When a motion like that could be made without giving notice, he went out of the way and fore-warned the Law Member that such a motion was going to be made. I submit, Sir, that it would considerably facilitate discussion and show us the direction to be taken in its consideration. It has been suggested that the adjournment motion has to be adjourned to a later stage when it may be taken up. I submit, Sir, that if it is considered now, that will facilitate discussion, focus discussion and specific amendments need not be gone into. That is the view with which I rise to submit my position. I have further this difficulty. At the present moment the amendments are not on the paper. I would therefore submit that the amendments be put in and the notice paper be recirculated. But if it is insisted on that my amendment is urged before the President could give the ruling I have no other go but to suggest that the present agenda might be withdrawn and revised."

Rao Bahadur C. NATESA MUDALIYAR :—" Sir, I have also given notice of such an amendment and that too does not come up in the agenda. I request, Sir, that when incorporating the amendments of my hon. Friend from Chingleput my amendments also might be incorporated."



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\* The hon. the PRESIDENT :—“ I think the best thing will be to restore these amendments to their places in the agenda paper and I shall see that it is done. Meanwhile it would be well if the hon. Member Mr. Natesa Mudaliyar would be willing not to move his amendment until the question comes before us.”

\* The hon. Mr. C. P. RAMASWAMI AYYAR :—“ May I suggest this course, if it meets with the general desire of the House? I take it that the omission of amendments of which notice has been given by the hon. Members for Chingleput and Madras, relates to only two sections, section 7 and one other section. If it be convenient, unless of course it is felt by the House that the consideration of the whole of the measure may be adjourned, we may go on with the consideration of other important amendments on which there is absolutely no difference of opinion. Those amendments have been put in the agenda and circulated and I think we can go on with them. The other amendments may be taken up either to-morrow or on Friday and then any portion of the Act or the whole of it may be adjourned for any specified period if it is felt necessary.”

Mr. A. RAMASWAMI MUDALIYAR :—“ I have got one difficulty in accepting the suggestion made by the hon. the Law Member. Frankly, the particular amendment of which I have given notice is the most vital amendment for the Civil Courts Bill itself and in comparison with that amendment the others are mere flea-bites. There is this further difficulty also. If you are going to rule this amendment as out of order, it is possible we may consider the possibility of a purely amending Bill being brought forward. In that case it is not the mere word ‘ consolidated ’ that has to be omitted but the whole Bill has to be recast. The hon. the Law Member himself has made that suggestion and I presume he would have no objection to bringing forward an amending Bill purely for the purpose required. That amending Bill could not be brought forward merely by omitting ‘ consolidated ’. So that if we discuss all the sections and then go back to sections 7 and 8, we will be stultifying ourselves enormously.”

\* The hon. Mr. C. P. RAMASWAMI AYYAR :—“ I may clear the error at once. There is, I think, a cleavage of opinion on this matter. There is one section that thinks that these safeguards are matters that ought to be proceeded with irrespective of the other matters. I take it the other opinion notwithstanding the economy in contemplation, thinks that it is not worth being proceeded with. That might possibly be taken as the first motion for adjournment. As I have said there is one section of opinion that holds that it is not worth while bringing forward any economies unless the High Court's powers are taken away; that is a matter which can be decided on a motion for adjournment or otherwise. The other question may be discussed later on. There I desire to join issue with my friend the hon. Member for Chingleput. He says there are only one or two sections which need alteration. I venture to think it is not so. Because, the Select Committee has given its opinion on all these 28 sections of the Act as at present existing and I suggest that in respect of all these sections so far as the Select Committee report is concerned we can go forward. So it is a matter involving a great principle, viz., whether it is worth while going on. I take it that hon. Members desire a vote on the question. But that will be really independent of the other consideration.”



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\* Rao Bahadur T. A. RAMALINGA CHETTIYAR:—"I fear that on this matter there is some misconception. I understand my hon. Friend Mr. Ramaswami Mudaliyar to say that he had no objection to this Bill going forward as an amending Bill; only he does not want it to go forward as a consolidated Bill because he could not bring in the amendment he wants. I do not think that point has been met by the hon. the Law Member. Whatever advantages we want to obtain by this Bill the other Members have no objection to it."

\* The hon. Mr. C. P. RAMASWAMI AYYAR:—"I think, I have definitely stated that. I said 'let me go on with the sections as they emanated from the Select Committee and the other question may be taken as a separate one.'"

\* Rao Bahadur T. A. RAMALINGA CHETTIYAR:—"We need not go into all the amendments suggested by the Select Committee. Now, Sir, there is another matter also about which I need say something; i.e., the question of the admissibility of the definite issues raised by the hon. Member for Chingleput has not been decided. That will clear the ground to a large extent. That will probably show a *via media* with which we can broach the question. If I may make a suggestion I would request you to hold over consideration of the matter for to-morrow morning by which time you may consult, if necessary, the law officers and come to a definite conclusion on the question of the admissibility of the specific provisions which are sought to be introduced by the hon. Member for Chingleput. Then we shall be in a very much better position and we can go forward with the Bill or do otherwise. Also, the hon. the Law Member may have time for re-reading the 'Bill as it emanated from the Select Committee and decide how it can be dealt with as an amending Bill. That seems to me to be a better thing to do than forcing a division at this moment. We now do not know where we stand and we do not know whether the amendment is going to be allowed. Secondly we do not know whether it is or it is not possible to go forward with the amendments wanted by the hon. the Law Member. These are the important questions which have to be considered carefully before we commit ourselves to a sort of enforced vote in this Council. So, I will earnestly request you to postpone consideration of this till 11 o'clock to-morrow so that the hon. the Law Member may consider the matter."

4-15 p.m. Mr. A. RAMASWAMI MUDALIYAR:—"I have only to say, Sir, that the position that I took has been amply explained by my friend from Coimbatore. What I said was that those amendments only which were necessitated for the purpose of economy may be taken up. The hon. the Law Member suggested that except sections 7 and 8 all other amendments might be taken up. The very first section that would be put is this: 'This Act may be called the Madras Civil Courts Act, 1924. Are we to suggest therefore an amendment to this Act that this Act may be called the Madras Civil Courts Amendment Act? The whole question is that you cannot possibly enter into this matter taking one amendment after another unless you know whether it is to be merely an amending Bill or an amending and consolidating measure. Therefore I suggested for the convenience of the House that the specific amendment I tabled would facilitate discussion. I am aware that we are not entitled to ask for a ruling until the amendment is reached. It is for general convenience that



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I made that suggestion. If not, I shall take the amendment in the order in which it arises. Anyhow, the postponement of this measure till to-morrow 11 o'clock and circulation of the amendments that have been tabled by us meanwhile will help us in this matter."

\* The hon. Mr. C. P. RAMASWAMI AYYAR :—"I am agreeable to the matter being taken up at 11 o'clock to-morrow, pending which time, you, Mr. President, may consider the matter and decide on the discussion of this particular amendment"

With the leave of the House, the motion was allowed to stand over till after question time the next day.

## XV

### THE MADRAS INDIAN PORTS ACT (AMENDMENT) BILL.

\* The hon. Mr. R. A. GRAHAM :—"Sir, I beg to introduce a Bill to amend the Indian Ports Act, 1908, in its application to the Presidency of Madras.

"In the explanation to Part II of Schedule I of the Act a ship is defined as meaning a sailing vessel and a steamer as meaning a steam vessel, but there is no mention of ships propelled by internal combustion engines; and there is a danger therefore that such ships will escape payment of port dues. Section 33 (2) of the Act says that the Local Government may, by notification in the local official gazette, alter or add to any entry in the First Schedule relating to ports within its own province, but the Government of India have ruled that though the local Government may by notification alter or add to any entry in the Schedule, they cannot in that manner alter any part of the Explanation to the Schedule. In order therefore to ensure that ships propelled by internal combustion engines shall be liable to pay port dues it is necessary for us to bring in an amending Bill and it is for this purpose that the Bill is being introduced. At present, however, the Schedule is complicated and difficult to find one's way about. So the opportunity has been taken to simplify it. The alteration of the Schedule has made it necessary to amend the wording of section 33 (2) and 33 (3). I beg to move that the Bill be read in Council."

The hon. Mr. C. P. Ramaswami Ayyar seconded the motion.

The motion was put to the House and carried.

The Secretary then read the title of the Bill.

\* The hon. Mr. R. A. GRAHAM :—"I beg to move, Sir, that the Bill be not referred to a select committee. As I have explained, it is a very simple one, and I do not suppose that there is any doubt about the desirability of altering the Schedule or that there is a better way of doing it than by the amendments proposed."

The hon. Mr. C. P. RAMASWAMI AYYAR :—"I second it."

Mr. A. RAMASWAMI MUDALIYAR :—"Sir, I suggested that this Bill be referred to a select committee. My reason is simply this. Last time the hon. the Finance Member wanted to introduce a Bill, I suggested that there was a view prevailing in this Council that it should be referred to a select committee. I think I am not springing a surprise on the hon. the Finance